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EXAMINER
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HUYNH, KHOA D

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/632,258  
Filing Date: July 31, 2003  
Appellant(s): DE LEON ET AL.

**MAILED**  
**APR 17 2007**  
**Group 3700**

Sebastian C. Pugliese III  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/19/2006 appealing from the Office action mailed 06/14/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

***Grounds of rejection not on review***

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Tsuneki (JP 2002-165729) in view of Tokiko (2002209799).

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuneki (JP 2002-165729).

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,375,271	Frankel	12-1994
5,379,558	Mason, III	01-1995
JP 2002-165729	Tsuneki Yoshiharu	06-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claim 33, as presently understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Frankel (5375271).

The Frankel reference discloses a disposable mat (10) having a longitudinal direction, a lateral direction and at least one edge (Fig. 1). The mat also includes a first face (16), a second face (12) and a decorative graphic (18) located on the second surface. The decorative graphic has a theme which is the head of an elephant (col. 4, lines 15-19) or an elephant head with bubbles coming out of the elephant's trunk (Fig. 1). Such decorative graphic theme is inherently related to the theme of the article graphics of a known disposable diaper (see cited US 6297424 and US 2005/0015066).

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2. Claims 1-4, 8, 11-17, 31 and 32, as presently understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuneki (JP 2002-165729) in view of Mason, III (5379558).

Regarding claim 1, the Tsuneki reference discloses a disposable mat (1) having a longitudinal direction, a lateral direction and an edge (Fig. 4). The mat includes a first face (6), a second face opposite the first face(5), and a holding mechanism (at 7) configured to increase the resistance of the mat to movement when the first face is the place is placed upon a planar surface. The Tsuneki reference DIFFERS in that it does not specifically include a line of weakness as claimed. Attention, however, is directed to the Mason, III reference which discloses another disposable mat (Fig. 2) having at least a line of weakness being configured to allow the separation of a removable portion from the disposable mat. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Tsuneki mat by employing a line of weakness, in view of the teaching of Mason, III, in order to form the crevice for the Tsuneki mat according to the configuration of the toilet bowl or urinal that is being used.

Regarding claim 2, the first face (6) is liquid impermeable.

Regarding claim 3, the line of weakness is provided by perforation (Mason, III, col. 3, lines 61-65).

Regarding claim 4, even though the modified Tsuneki reference does not specifically disclose that the at least one line of weakness is provided by

ultrasonic bonds, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Tsuneki reference by using the ultrasonic bonds as a preferred thermal forming process to form the at least one line of weakness. Such modification would be considered a mere preferred process for forming a line of weakness on the basis of its suitability for the intended use especially since such forming of a line of weakness could be formed by known thermal forming process (see cited US 4675015, col. 2, lines 10-11 as evidence).

Regarding claim 8, as schematically shown in Figure 2 of Mason, III, the line of weakness is curvilinear.

Regarding claim 11, the mat further includes a mat perimeter. As schematically shown in Figure 2 of Mason, III, the line of weakness is shaped such that upon separating the removable portion from the mat, the mat includes an opening within the mat perimeter.

Regarding claim 12, the modified Tsuneki reference DIFFERS in that it does not specifically disclose the opening is at least 22 cm wide as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width for the opening size since discovering an optimum value for size of an opening involve only routine skill in the art.

Regarding claims 13 and 14, as schematically shown in Figure 3 or 4 of Tsuneki, the mat includes a first pair of reference marks located on the second

surface. The pair of reference marks is configured to indicate where the feet of the user should be placed. The first pair of reference marks is each located a first substantially equal distance from the line of weakness.

Regarding claim 15, the modified Tsuneki reference also DIFFERS in that it does not specifically disclose that the marks locate a first substantially equidistance between 5 and 22 cm as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Tsuneki mat by using such equidistance for placing the marks because (a) such location of the marks allows user to be placed in the central location of the toilet, thereby preventing misaim when urinating and (b) discovering an optimum value for the preferred distance between the marks involve only routine skill in the art.

Regarding claim 16, each of the pair of first reference marks are provide a by a set of first graphics (which are the foot prints) and are substantially similar.

Regarding claim 17, a pair of footprints depicts the pair of first reference marks.

Regarding claim 31, as schematically shown in Figure 3 or 4 of Tsuneki, the mat has a substantially rectilinear (straight lines) shape.

Regarding claim 32, the Tsuneki reference discloses a disposable mat (1) having a longitudinal direction, a lateral direction and an edge (Fig. 4). The mat includes a liquid impermeable first face (6), an absorbent second face opposite the first face (5), and a holding mechanism (at 7) configured to increase the

resistance of the mat to movement when the first face is the place is placed upon a planar surface. The Tsuneki reference DIFFERS in that it does not specifically include a line of weakness as claimed. Attention, however, is directed to the Mason, III reference which discloses another disposable mat (Fig. 2) having at least a line of weakness being configured to allow the separation of a removable portion from the disposable mat. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Tsuneki mat by employing a line of weakness, in view of the teaching of Mason, III, in order to form the crevice for the Tsuneki mat according to the configuration of the toilet bowl or urinal that is being used. As schematically shown in Figure 3 or 4 of Tsuneki, the mat includes a first pair of reference marks located on the second surface. The pair of reference marks is configured to indicate where the feet of the user should be placed. The first pair of reference marks is each located a first substantially equal distance from the line of weakness.

#### **(10) Response to Argument**

Applicant asserts that the Frankel reference does not teach a mat including a decorative graphic having a decorative graphic theme where the decorative graphic theme is related to the theme of article graphics of a disposable absorbent article. See argument section, paragraph 1. The examiner disagrees.

On the contrary, Frankel does disclose a bath mat having graphics with a decorative theme that is a spraying elephant head (notes: bubbles are thematically related to an elephant head since it is known that the elephant uses its trunk to spray



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fluid while bathing or playing). Such decorative graphic (i.e. a fun-having animal) has theme that are related to the graphics on a known, disclosed diaper such as the one described in the US 6297424 (col. 3, lines 55-65; col. 4, lines 39-49) which discloses a fun-having animal or the one described in the US 2005/0015066 (Fig. 6D) which discloses a spraying elephant head. Thus, the Frankel reference does disclose the invention as claimed in claim 33. Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention as disclosed in the instant specification, it is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant also asserts that there is no suggestion or teaching to combine the references, i.e. Tsuneki and Mason III to arrive at applicant's invention as claimed. See the argument section, paragraph 2. The examiner disagrees.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly

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suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, for instance, the Tsuneki reference discloses a disposable mat having substantially all claimed features except for the line of weakness being configured to allow the separation of a removable portion from the disposable mat. Mason III is applied herein for the teaching of forming the line of weakness configured to allow the separation of a removable portion from a disposable mat. The examiner maintains that such modification, i.e. forming the line of weakness configured to allow the separation of a removable portion from a disposable mat is obviously within one of ordinary skill art and is not convinced that such claimed subject matter rises to the level of patentability.

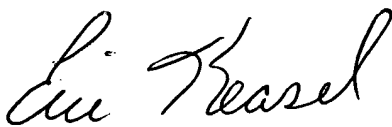
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Khoa Huynh

Conferees:



Eric Keasel

  
Kevin Shaver